Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2026-020271 07/06/2026

HONORABLE DAVID MCDOWELL

CLERK OF THE COURT
A. Patel
Deputy

STATE OF ARIZONA, et al.

v.

DAVID MARSHALL

NATHAN T ARROWSMITH

LINLEY SARAH WILSON

ALEXA G SALAS
JUDGE MCDOWELL

UNDER ADVISEMENT RULINGS

Pending before the Court is the State of Arizona's *Complaint (Writ of Quo Warranto)* filed May 14, 2026. In this Complaint the State of Arizona seeks to have David Marshall declared ineligible to hold the office of Navajo County Recorder.

Also pending before the Court is David Marshall's June 1, 2026 *Motion to Dismiss;* the June 10, 2026 *State of Arizona's … Response to Defendant's Motion to Dismiss;* and the June 16, 2026 *Reply in Support of Motion to Dismiss.*

The Court has received a June 26, 2026 amicus brief from the Arizona House of Representatives and responsive briefs from the State and Mr. Marshall filed July 1, 2026.

RULING ON MOTION TO DISMISS

Mr. Marshall advances several inter-related arguments under Rule 12(b)(1) and 12(b)(6) Ariz.R.Civ.Proc. The Court understands Mr. Marshall's arguments to be: (1) the State chose the wrong form of action because certiorari is the exclusive form of action for challenging a county board's determination that a county official is eligible for office; (2) the State lacks standing to bring this action because it has failed to identify a law that was violated and the State has not identified an injury resulting from Mr. Marshall serving as county recorder; and (3) the quo warranto action fails on the merits.

Is Quo Warranto the proper form of action?

Mr. Marshall portrays this action as a challenge to the Navajo County Board of Supervisor's determination of Mr. Marshall's qualifications under A.R.S. §11-402. A.R.S. §11-402 states,

> A person shall not be eligible for a county office, whether elective or appointive, nor shall a certificate of election or commission issue to any person, unless he is, at the time of his election or appointment, eighteen years of age or over, a resident of the state, an elector of the county or precinct in which the duties of the office are to be exercised and able to read and write the English language. The board of supervisors shall be the sole judge of such qualifications, subject to review by certiorari in the superior court.

A.R.S. §11-402 identifies four qualifications the Board must evaluate: majority, state residence, being an elector in the county, and English proficiency. No language in A.R.S. §11-402 indicates the Board of Supervisors is required to evaluate whether a candidate complied with any other county-imposed qualification (if any exist) or a candidate is qualified under the Arizona Constitution. Further A.R.S. §11-402 says the board of supervisors is the sole judge of **such** qualifications. The term "such" refers to the four previously stated qualifications, not every qualification.

The State does not challenge the Board of Supervisor's determination of Mr. Marshall's age, state residence, being an elector in Navajo county, or his English proficiency. The State challenges a qualification for office which is not within the scope of the Board of Supervisor's responsibility under A.R.S. §11-402. A challenge to the four qualifications identified in A.R.S. §11-402 must be brought by certiorari, but the statute does not require that any other qualification challenges be brought by certiorari.

Mr. Marshall also argues that the state Supreme Court has original jurisdiction over quo warranto actions challenging eligibility for state offices. Mr. Marshall cites three cases involving challenges to state office (state tax commissioner, attorney general, and governor). The State is not challenging Mr. Marshall's eligibility for a state office; it is challenging his eligibility for a county position and jurisdiction is proper in the superior court.

Mr. Marshall asserts the State's position puts A.R.S. §11-402 and A.R.S. §12-2041 in conflict. The Court does not agree. If this were an action to challenge the four qualifications entrusted to the board of supervisors, then A.R.S. §11-402 controls and an action in certiorari must be brought. However, if the challenge is based upon other qualifications, then A.R.S. §12-2041 controls and

an action in quo warranto must be brought. The Court also does not find the State's position "necessarily implies that A.R.S. §11-402 is unconstitutional" as argued by Mr. Marshall.

The Court finds the State has properly brought this as a quo warranto action in the superior court. The Court denies Mr. Marshall's request to dismiss this action on the grounds this Court lacks jurisdiction because the state did not bring this action as a writ of certiorari.

Has the State identified a law violated and an injury sustained?

Mr. Marshall argues this Court lacks jurisdiction because the State failed to identify the statute violated by Mr. Marshall in accepting the position of county recorder and it failed to identify the harm caused. Mr. Marshall uses this same argument to request the Court find the State has brought a claim upon which no relief can be granted.

The State's challenge to Mr. Marshall serving as the Navajo County Recorder is based upon A.R.S. §12-2041 and the Arizona Constitution, Article IV, part 2, section 5. A.R.S. §12-2041 provides, in pertinent part,

> **A.** An action may be brought … court by the attorney general in the name of the state upon his relation, upon his own information or upon the verified complaint of any person, … against any person who usurps, intrudes into or unlawfully holds or exercises any public office or any franchise within this state.

Arizona Constitution, Article IV, part 2, section 5 states:

> No member of the legislature, during the term for which he shall have been elected or appointed shall be eligible to hold any other office or be otherwise employed by the state of Arizona or, any county or incorporated city or town thereof. This prohibition shall not extend to the office of school trustee, nor to employment as a teacher or instructor in the public school system.

Mr. Marshall argues the State must identify (i) the attorney general's specific authority to sue, (ii) the specific statute violated, and (iii) that the harm is redressable by judicial decision. The State has met those elements.

A.R.S. §12-2041 expressly gives the attorney general the authority to sue.

Mr. Marshall's second argument is largely based upon *State v. Arizona Board of Regents,* 253 Ariz. 6 (2022). That case is distinguishable from the quo warranto action here. Here the State asserts that Mr. Marshall unlawfully holds office. In *State v. Arizona Board of Regents,* the attorney

general was not arguing the board of regents were unlawfully holding office, he argued the board was unlawfully exercising its office. There the Supreme Court required the attorney general to point to a particular law to demonstrate the exercise of office was unlawful. Mr. Marshall's argument that the State must allege a statute violated or an ultra vires act perform would be correct if the State were asserting that Mr. Marshall was unlawfully exercising his office, but it is not.

The State has alleged Mr. Marshall violated Article IV, part 2, section 5 of the Arizona Constitution by holding a county office during his unexpired legislative term. Mr. Marshall provided the Court with no authority that the State must cite a particular statute when it alleges an individual is unlawfully holding office. While the Arizona Constitution is not categorized as a statute it is nonetheless the law of this state.

Mr. Marshall also asserts the State has failed to identify the harm and indicate it is redressable by judicial decision.[1] It has. The State brings quo warranto actions on behalf of the public. *State v. Boehringer,* 16 Ariz. 48 (1914). The quo warranto action is intended to redress public wrongs. *Id.* Mr. Marshall's *Motion* is for dismissal pursuant to Rule 12. A motion to dismiss is not a procedure for resolving disputes about the facts or merits of a case. *Coleman v. City of Mesa,* 230 Ariz. 352, 363, ¶46 (2012). The narrow question presented by a motion to dismiss for failure to state a claim is whether facts alleged in a complaint are sufficient to allow the plaintiff an opportunity to prove its case. *Id.* Dismissal is permitted only when a plaintiff would not be entitled to relief under any interpretation of the facts susceptible of proof. *Fid. Sec. Life Ins. Co. v. State Dep't of Ins.,* 191 Ariz. 222, 224, ¶4 (1998). Moreover, a motion to dismiss requires a court to accept all material facts alleged by the nonmoving party as true (*Acker v. CSO Chevira*, 188 Ariz. 252, 255 (App. 1997)), view those facts in the light most favorable to the nonmoving party (*Mirchandani v. BMO Harris Bank, N.A.,* 235 Ariz. 68, 69, ¶2 (App. 2014)), and indulge the non-moving party all reasonable inferences that the pled facts permit (*Cullen v. Auto–Owners Ins. Co*., 218 Ariz. 417, 419, ¶7 (2008)). While Mr. Marshall may disagree with the harm alleged, it is not the court's role in deciding a motion to dismiss to evaluate the merits of the allegations. Based upon the allegation of harm, the court cannot find as a matter of law that the State would not be entitled to relief under any interpretation of the allegations of harm.

The Court finds the State has established it has authority to bring this action; it has alleged the law violated; and it has alleged the harm caused and demonstrated how that harm can be addressed by judicial action.

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[1] In this portion of the argument Mr. Marshall makes arguments based upon *Jennings v. Woods*, 194 Ariz. 314 (1999) but that case involved A.R.S. §12-2043 not 2041. A.R.S. §12-2043 imposes different qualification requirements to bring suit. Mr. Marshall also made a standing argument based upon *Bennett v. Napolitano* 206 Ariz 520 (2003) which did not involve the attorney general's statutory authority to bring a quo warranto action.

The Court denies Mr. Marshall's request to dismiss this action on the grounds this Court lacks jurisdiction and on the grounds that the State failed to allege the law violated or the harm intended to be addressed.

Can the Quo Warranto Action prevail on the merits?

Mr. Marshall's final argument is that the State cannot prevail on the merits. As indicated above, a motion to dismiss is not the avenue to address the merits of a case. However, the hearing set for June 22, 2026 was set to address both the *Motion to Dismiss* and the merits of the State's complaint. The parties agreed during the June 2, 2026 return hearing that the issues in the complaint were purely legal issues and did not require any discovery/disclosure or presentation of evidence.

Thus, the Court will now turn to the merits of the claim and decide the case on the merits.

Because the Court found Mr. Marshall did not advance any grounds upon which the Complaint should be dismissed under Rule 12(b), Ariz.R.Civ.Proc., **IT IS ORDERED** denying Mr. Marshall's *Motion to Dismiss.*

RULING ON COMPLAINT IN QUO WARRANTO

The undisputed facts are that Mr. Marshall was elected on November 5, 2024 as a Representative of District 7 to the state legislature for a two-year term. Mr. Marshall took his oath of office on January 13, 2025. On April 14, 2026 the Navajo County Board of Supervisors voted to appoint Mr. Marshall to fill the vacant position of Navajo County Recorder. On April 17, 2026 Mr. Marshall resigned from the legislature. On April 21, 2026 Mr. Marshall was sworn in as Navajo County Recorder.

The State argues that Mr. Marshall is ineligible to serve as county recorder pursuant to Article IV, part 2, section 5 of the Arizona Constitution which provides:

> No member of the legislature, during the term for which he shall have been elected or appointed shall be eligible to hold any other office or be otherwise employed by the state of Arizona or, any county or incorporated city or town thereof. This prohibition shall not extend to the office of school trustee, nor to employment as a teacher or instructor in the public school system.

The State argues Mr. Marshall's April 17, 2026 resignation does not permit him to serve as county recorder because the prohibition on holding another office continues for the entire term for which

he was elected. Mr. Marshall argues the State's reading of that constitutional provision is incorrect and fails to give meaning to the clause as a whole.

"A cardinal principle of statutory interpretation is to give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous." *Nicaise v. Sundaram*, 245 Ariz. 566, 568 ¶11 (2019).

The State cites *State ex rel. Pickrell v. Myers*, 89 Ariz. 167 (1961) arguing this case stands for the proposition that one becomes a member of the legislature upon taking the oath of office. The Court disagrees. *Myers* did not address when one becomes a *member* or when one ceases to be a *member,* it addressed whether one was a *member.* The Court in *Myers* found Mr. Myers was not a *member* of the legislature because he did not take his oath of office. But failing to take the oath is not the only circumstance under which an individual who has been elected to the position fails to be a *member* of the legislature during his/her elected term. Members of the legislature can die, be expelled (Ariz. Const. art. IV, pt. 2, §11), cease to be a resident of their elected district, or resign (A.R.S. §38-294). Any one of those creates a vacancy and any one of those prevents the individual from serving in his/her elected role. The Court is unpersuaded that *Myers* is limited to just individuals who neglect to take the oath of office.

The reasoning of the Court in *Myers* mitigates against the State's interpretation. The Court stated the "evil sought to be avoided [by this Constitutional provision] is the participation by a legislator in the deliberations and enactments pertaining to a public office which might subsequently be held by him during his term as a legislator," or in which he "may subsequently acquire a personal interest." *Myers*, 89 Ariz. at 169. That harm ceases to exist when an individual ceases to be a *member* of the legislature. Mr. Marshall as a former member of the legislature has no more authority to influence the course of legislation than any other citizen or county official. He is certainly not able to sit in his former legislative seat, participate in committee meetings, submit proposed bills or resolutions, or do any of the other legislative acts that influence the course or legislation or participate in such deliberations or enactments.

The State argues that interpreting the term *member* to exclude former members, renders the phrase "otherwise during the term" superfluous. The Court does not agree. A member of the legislature (one who has not resigned or been expelled, etc.) is ineligible for a county or state position during the term for which he/she was elected. However, when one ceases to be a *member* of the legislature, he/she becomes eligible for those county or state positions. To become eligible a *member* of the legislature must cease being a *member* or wait for his/her elected term to end. Mr. Marshall became eligible to serve as the Navajo County Recorder upon his resignation – the point at which he ceased being a *member* of the legislature.

The Court does not find that Mr. Marshall was a *member* of the legislature after April 17, 2026. Because he was no longer a *member* of the legislature, Mr. Marshall's acceptance of the Navajo County Recorder position by taking an oath of office on April 21, 2026 did not violate Article IV, part 2, section 5 of the Arizona Constitution.

The Court does not find Mr. Marshall is unlawfully holding the office of Navajo County Recorder.

IT IS ORDERED denying the State's request to issue a writ of quo warranto holding that the office of the Navajo County Recorder is vacant.

Because the Court has found that Mr. Marshall is not unlawfully holding the office of the Navajo County Recorder, the request for relief under A.R.S. §12-2045 is moot.

Mr. Marshall requested an award of fees pursuant to A.R.S. §12-348. He shall submit an application for fees consistent with that statute no later than **July 17, 2026.** Any response or objection shall be due no later than **July 27, 2026.**